

REMARKS

This response is submitted in reply to the final Office Action dated May 5, 2006. No fee is due in connection with this Response. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-330 on the account statement.

Claims 1-33 are pending in this application. Claims 7-12, 18, 20, 25, 27-28 and 30-33 are rejected under 35 U.S.C. §102 and Claims 1-6, 13-17, 19, 21-24, 26 and 29 are rejected under 35 U.S.C. §103. In view of the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 7-12, 18, 20, 25, 27-28 and 30-33 are rejected under 35 U.S.C. §102(b) as anticipated by EP 0645095 to Collings et al. (“*Collings*”). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Independent Claims 7, 18, 20, 25, 28 and 31 recite, in part, a dried pet food having a density that ranges from about 16.8 lbs/ft³ to about 20 lbs/ft³. In contrast, Applicants respectfully submit that *Collings* fails to disclose a dried pet food product having a density within the claimed range.

The Patent Office states that in providing the previous calculations, Applicants used measurements from the package containing the product of *Collings* and not from the product itself. The Patent Office further states that the package contains air space that would be expected to lessen the density of the product. Nevertheless, Applicants respectfully submit that the calculations were based on reasonable assumptions regarding the overall product and packaging. For example, although the calculations did not consider the possible air space between the pet food product (which would increase the density), the calculations balanced this by leaving out the thickness and weight of the package itself in determining the total volume and weight (which would decrease the density). As a result, Applicants’ previous density calculations reflected an approximate estimate of the density of the pet food product in *Collings*.

Applicants also submit a supplemental Affidavit under 37 C.F.R. §1.132 (“*Supplemental Affidavit*” attached hereto as Exhibit A). This *Supplemental Affidavit* is submitted to show that by using reasonable estimations for the product packaging and filling of the pet food in *Collings*, the skilled artisan has a sufficient basis for determining the density of *Collings*’ pet food product.

As such, Applicants respectfully assert that the *Supplemental Affidavit* properly evidences the deficiencies of *Collings* with respect to the present claims.

As supported by the *Supplemental Affidavit*, *Collings* only discloses a pet food having a density at or below 12 lbs/ft³. As a result, *Collings* fails to disclose or suggest a pet food product having a density that ranges from about 16.8 lbs/ft³ to about 20 lbs/ft³. *Collings* is also unconcerned with the density and size of the pet food product to provide a resultant product that can clean teeth by removing more plaque and tartar build-up than similar pet food products in accordance with the present invention. Instead, *Collings* is directed entirely toward an expanded pet food product similar to a low density puff product that tends to melt in the mouth, which teaches away from the presently claimed invention. See, *Collings*, page 2, line 52 and page 5, lines 7-9. Such a product is incapable of having a density that is abrasive enough to clean teeth in accordance with the present claims.

The Patent Office argues that because *Collings*' product can provide improved resistance to breaking breakage upon shipping and handling, it can also translate to improved resistance to breaking upon chewing by a pet. However, Applicants respectfully submit that this reasoning is improper for a number of reasons.

First, the forces and points of impact and environment of a pet food product being transported and being chewed by a pet are drastically different. During transportation in a package, the numerous pet food pieces at most rub against each. Moreover, packing them in closely together allows them to provide a concerted resistance that minimizes crushing and breaking (e.g. packaged potato chips). In contrast, the relatively few pet food pieces placed into a pet's mouth each receive much greater forceful impacts and shear forces with sharp blunt objects (i.e. teeth) than the pet food pieces in packages could ever receive. In addition, pet food pieces in packages remain dry allowing them to stay consistent in their shapes and structures. In the mouth of a pet, pet food pieces are subjected to moisture, which can weaken their structures unless the pet food is specifically designed to maximize resistance to change caused by moisture and chewing (e.g. in accordance with the present invention). As a result, a pet food having improved resistance to breaking breakage upon shipping and handling does not mean it provides any significant resistance to breaking upon chewing by a pet.

For the reasons discussed above, Applicants respectfully submit that Claims 7, 18, 20, 25, 28 and 31 and Claims 8-12, 27, 30 and 32-33 that depend from these claims are novel,

nonobvious and distinguishable from the cited reference. Accordingly, Applicants respectfully request that the rejection of Claims 7-12, 18, 20, 25, 27-28 and 30-33 under 35 U.S.C. §102(b) be withdrawn.

In the Office Action, Claims 1-6, 13-17, 19, 21-24, 26 and 29 are rejected under 35 U.S.C. §103 as being unpatentable over *Collings* in view of U.S. Patent No. 5,431,927 to Hand et al. (“*Hand*”). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Independent Claims 1, 13 and 21 recite, in part, an unstriated dried pet food having density that ranges from about 16.8 lbs/ft³ to about 20 lbs/ft³. The unstriated product (versus striated) of the present invention, which stems from turbulent rather than laminar flow extrusion, results in a dried pet food having a cellular structure that includes microscopic air pockets. See, specification, page 8, lines 17-24. Because of the microscopic air pockets of this unstriated dried pet food, the inner surface will have a fine, sandpaper-like appearance and a dense, foam-like structure that is in contrast to a laminar-like structure. See, specification, page 8, lines 25-30. This cellular structure improves the tartar reducing properties of the product by applying a mechanical scraping action to the teeth. See, specification, page 8 line 30 – page 9 line 15.

In contrast, Applicants respectfully submit that one having ordinary skill in the art would not be motivated to combine the cited references to arrive at the present claims. References must be considered as a whole and those portions teaching against or away from the claimed invention must be considered. For example, *Collings* is directed toward an unstriated dog food product. *Hand*, by contrast, is directed toward an expanded, striated structural matrix, which teaches away from *Collings* and the product of the present invention.

In addition, Applicants respectfully submit that the Patent Office has failed to properly consider the previously submitted *Affidavit*. For example, the previous *Affidavit* showed that (1) the unstriated appearance and inner cellular structure resulting from a turbulent flow process significantly affects the performance of the claimed pet food as compared to other products of a striated appearance and (2) based on rheological and acoustic testing of the unstriated product of the present invention versus other striated products, these products are clearly different and present different functionalities in terms of dental plaque and tartar reduction. As a result, the skilled artisan would not find any motivation to combine a striated pet food product with an unstriated pet food product in the absence of hindsight.

The Patent Office is essentially arguing that the skilled artisan would take a striated pet food and make it unstriated. However, *Hand* requires striations in its pet food for a specific purpose. For example, *Hand* teaches that his invention is directed to an extruded animal food product having an expanded, striated structural matrix which, when chewed by the animal, effectively removes tartar, stain and plaque on the animal's teeth through a mechanical cleansing action without causing gastrointestinal distress. When chewed, the striated product fractures along the striations whereby the animal's teeth are retained in increased abrasive contact with the fractured layers. The teeth are then mechanically cleaned by the surfaces of the separated layers as the product is chewed by the animal, and the time that the product is retained in mechanical cleaning contact with its teeth is increased. See, *Hand*, column 2, lines 26-39. As a result, the striations are an essential and functional feature of *Hand*'s pet food and thus teach away from a combination with any unstriated pet food.

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). This certainly applies here where one of the cited references is directed to a product that is intended to be striated (*Hand*) and the other cited reference is directed to a food product intended to be unstriated (*Collings*). Consequently, the combination of *Hand* and *Collings* is improper and thus fails to render the claimed subject matter obvious for at least these reasons.

To support the combination and/or modification of the cited art to arrive at the claimed invention, the Patent Office has improperly applied hindsight reasoning by selectively piecing together teachings of each of the references in an attempt to recreate what the claimed invention discloses. Instead, the claims must be viewed as a whole as defined by the claimed invention and not dissected into discrete elements to be analyzed in isolation. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983); *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995). One should not use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d at 1075. (Fed. Cir. 1988).

For the reasons discussed above, Applicants respectfully submit that the combination of the cited references is improper and thereby fails to render the claimed subject matter obvious.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 1-6, 13-17, 19, 21-24, 26 and 29 be reconsidered and the rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

Robert M. Barrett
Reg. No. 30,142
Customer No. 29157

Dated: August 4, 2006